

DIAMOND SHAMROCK EXPLORATION CO.

IBLA 84-312

Decided October 31, 1984

Appeal from decision of the Dickinson, North Dakota, District Office, Bureau of Land Management, denying application for permit to drill a well on certain land in oil and gas lease M 31011 (ND) Acq.

Affirmed.

1. Oil and Gas Leases: Drilling -- Oil and Gas Leases: Stipulations

Under sec. 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1982), leases may only be issued with the consent of the surface management agency and subject to such conditions as it may impose to ensure adequate utilization of the land for the primary purposes for which it is being administered. A decision denying an application for permit to drill will be affirmed where the surface management agency has objected on the grounds that the proposed well site is within a no-surface-occupancy area stipulated to by the lessee.

APPEARANCES: James M. Pachulski, Environment & Regulation Engineer, Diamond Shamrock Exploration Company.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Diamond Shamrock Exploration Company (Diamond Shamrock) appeals from a decision of the Dickinson, North Dakota, District Office, Bureau of Land Management (BLM), dated October 4, 1983, 1/ denying an application for permit to drill (APD). Diamond Shamrock proposes to drill well No. 42-32 (Ronald Federal) on oil and gas lease M 31011 (ND) Acq.

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1/ Although the notice of appeal was received by BLM on Nov. 7, 1983, there is no explanation why the case file was not transmitted to the Board until Feb. 24, 1984. The appeal was received and docketed on Feb. 27, 1984.

Oil and gas lease M 31011 (ND) Acq. was issued effective March 1, 1975. The entire 2,279.76 acres included in the lease are acquired lands located within the Little Missouri National Grasslands, Custer National Forest. Accordingly, after consultation with the surface managing agency, the Forest Service (FS), stipulations were incorporated into the lease agreement. Stipulation No. 6 appears as follows:

Fifty-three percent (1210 acres) of this lease is within an (essentially roadless) (ponderosa pine) area. There will be no new surface occupancy within this area beyond the latest date of expiration of the existing leases in this area (7/31/81). After this date the lease must be explored from outside the essentially roadless area. If oil and gas discoveries occur inside this area prior to the above date, development will be allowed. Concentrations of petrified wood within the essentially roadless areas will not be disturbed.

The special stipulations were signed and accepted by the offerors (lessees) on February 14, 1975, as a condition of lease issuance.

After several intervening assignments, oil and gas lease M 31011 (ND) Acq. was transferred to Diamond Shamrock Corporation by assignment approved effective June 1, 1976. <sup>2/</sup> Diamond Chemicals Company proposed drilling an exploratory well in the SE 1/4 NE 1/4 sec. 32, T. 146 N., R. 99 W., fifth principal meridian, and filed an APD with BLM on September 6, 1983. The record discloses that a meeting between representatives of Diamond Chemicals Company, BLM, and FS was held September 21, 1983, at the proposed drilling site. The lessee was advised of the no-surface-occupancy status of sec. 32 and an alternate site for possible directional drilling was discussed. On September 30, 1983, BLM received a letter from FS withholding consent to drill the well in sec. 32 and recommending denial of the APD. In its October 4, 1983, decision, BLM denied the APD as proposed because "it would violate the 'no surface occupancy' lease stipulation for the Bennett Cottonwood Essentially Roadless Area [ERA] which became effective July 31, 1981." Diamond Shamrock appealed the decision pursuant to 43 CFR 3165.4.

Appellant argues that BLM's decision should be reversed for the following reasons:

The U.S. Forest Service has proposed that the southeast corner of the Bennett-Cottonwood roadless area be dropped from the Roadless inventory, because of current development for oil and gas. The proposed well falls within this area.

Stipulation number six of this lease states that fifty-three percent is within a roadless area, in actuality seventy-two percent is included. This discrepancy is significant.

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<sup>2/</sup> BLM recognized, effective Sept. 1, 1983, a change in the corporation's name to Diamond Chemicals Company. An assignment of the latter corporation's interest in the lease to Diamond Shamrock Exploration Company, executed Nov. 1, 1983, was filed for approval on Nov. 14, 1983. An unapproved assignee has standing to appeal an action adverse to its interest where its predecessor was a party to the decision appealed. See Tenneco Oil Co., 63 IBLA 339 (1982).

[1] Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, provides, in pertinent part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit \* \* \* and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

30 U.S.C. § 352 (1982); see 43 CFR 3107.3. This Board has previously recognized that under the terms of this statute the Department of the Interior has no authority to waive execution of the stipulations or to alter the terms of the stipulations upon which consent to leasing is conditioned by the surface management agency. Amoco Production Co., 69 IBLA 279 (1982). An assignee of a Federal oil and gas lease assumes responsibility for all terms and conditions of the assigned lease, including special stipulations. Dale Carr, 45 IBLA 183 (1980).

No drilling operations for an oil or gas well may be commenced in the absence of approval of an APD. 43 CFR 3162.3-1. After submission of the APD, the authorized officer will consult with the appropriate Federal surface management agency and with other appropriate interested parties and may approve the APD as submitted, approve the APD with modifications, or disapprove the APD with reasons. 43 CFR 3162.3-1(f). FS has identified an area within its Badlands Planning Unit, Little Missouri National Grasslands, as the Bennett Cottonwood ERA. As a condition to leasing land within this ERA, the FS required a stipulation (consented to by lessees) that no new operations requiring surface occupancy could commence after July 31, 1981. Despite appellant's assertion that FS plans to revoke this ERA as to the lands in question and allow oil and gas development thereon, FS has presently indicated its intention to continue management under stipulation No. 6. Until FS consents to appellant's surface occupancy, BLM may not authorize activities under the lease which are contrary to its terms. Therefore, Diamond Shamrock, as lessee, must comply with the lease terms and conditions as stated, and conform the proposed operations accordingly.

Appellant has made reference to the extent of the ERA's boundaries. The formation of the Bennett Cottonwood ERA and the designation of its boundaries resulted from FS's formulation of its management prescription for the Badlands Planning Unit. FS has provided a map depicting the ERA's boundary. From this map, it is discernible that the land embraced in appellant's APD (the SE 1/4 NE 1/4 of sec. 32) is located in the ERA. While the ratio of ERA lands in the lease is indeed closer to 72 percent, appellant has failed to indicate how this fact is significant. When oil and gas lease M 31011 (ND) Acq. was executed, the boundaries of the ERA had been established and stipulation No. 6 specifically states that after July 31, 1981, exploration must occur outside the ERA. Appellant and its predecessor, the actual APD applicant, are bound by the lease terms and conditions, including the no-surface-occupancy stipulation for ERA-designated lands. Accordingly, we must conclude that BLM properly denied the APD.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

We concur:

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R. W. Mullen  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge